

AMENDED IN SENATE JUNE 4, 2007
AMENDED IN ASSEMBLY APRIL 30, 2007
AMENDED IN ASSEMBLY APRIL 17, 2007
AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 941

Introduced by Assembly Member Torrico

February 22, 2007

An act to amend Section 10240 of the Business and Professions Code, and to add Section 1922 to the Civil Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 941, as amended, Torrico. Real property loans: ~~documents.~~ *disclosures.*

Existing law, the Real Estate Law, requires a real estate broker, who negotiates a loan to be secured by a lien on real property, to deliver to the borrower a statement in writing containing specified information relating to the loan transaction. Existing law requires a lender to provide a borrower with specified information prior to execution by the borrower of a mortgage payment instrument.

This bill would ~~authorize a real estate broker to provide a borrower the option to receive a copy of this statement in an electronic format, paper format, or both, as specified. The bill would also authorize a lender, as defined, that negotiates or services a loan secured by a lien on real property to provide a borrower with the option to receive a copy of the disclosures required by the Real Estate Settlement Procedures Act of 1974 and the Truth in Lending Act in an electronic format, paper~~

~~format, or both~~ require the Department of Real Estate, in conjunction with the Department of Corporations and the Department of Financial Institutions, to review the mortgage loan disclosure process and, by July 1, 2008, to report to the Legislature with recommendations on how that process can be improved, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Department of Real Estate, in conjunction
2 with the Department of Corporations and the Department of
3 Financial Institutions, shall review the mortgage loan disclosure
4 process and, by July 1, 2008, report to the Legislature with
5 recommendations on how that process can be improved to ensure
6 a consumer's ability to better understand the terms of a mortgage
7 loan. This report shall include, but not be limited to,
8 recommendations on which state-required mortgage documents
9 should be updated to reflect today's market.

10 ~~SECTION 1. Section 10240 of the Business and Professions~~
11 ~~Code is amended to read:~~

12 ~~10240. (a) Every real estate broker, upon acting within the~~
13 ~~meaning of subdivision (d) of Section 10131, who negotiates a~~
14 ~~loan to be secured directly or collaterally by a lien on real property~~
15 ~~shall, within three business days after receipt of a completed written~~
16 ~~loan application or before the borrower becomes obligated on the~~
17 ~~note, whichever is earlier, cause to be delivered to the borrower a~~
18 ~~statement in writing, containing all the information required by~~
19 ~~Section 10241. It shall be personally signed by the borrower and~~
20 ~~by the real estate broker negotiating the loan or by a real estate~~
21 ~~licensee acting for the broker in negotiating the loan. When so~~
22 ~~executed, an exact copy thereof shall be delivered to the borrower~~
23 ~~at the time of its execution. The real estate broker negotiating the~~
24 ~~loan shall retain on file for a period of three years a true and correct~~
25 ~~copy of the statement as signed by the borrower.~~

26 ~~No real estate licensee shall permit the statement to be signed~~
27 ~~by a borrower if any information required by Section 10241 is~~
28 ~~omitted.~~

29 ~~(b) For the purposes of applying the provisions of this article,~~
30 ~~a real estate broker is acting within the meaning of subdivision (d)~~

1 of Section 10131 if he or she solicits borrowers, or causes
2 borrowers to be solicited, through express or implied
3 representations that the broker will act as an agent in arranging a
4 loan, but in fact makes the loan to the borrower from funds
5 belonging to the broker.

6 (e) ~~In a federally regulated residential mortgage loan transaction~~
7 ~~in which the principal loan amount exceeds the principal loan~~
8 ~~levels set forth in Section 10245, a real estate broker satisfies the~~
9 ~~requirements of this section if the borrower receives (1) a “good~~
10 ~~faith estimate” that satisfies the requirements of the Real Estate~~
11 ~~Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.),~~
12 ~~and that sets forth the broker’s real estate license number and a~~
13 ~~clear and conspicuous statement on the face of the document stating~~
14 ~~that the “good faith estimate” does not constitute a loan~~
15 ~~commitment, (2) all applicable disclosures required by the Truth~~
16 ~~in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan~~
17 ~~contains a balloon payment provision, the disclosure described in~~
18 ~~subdivision (h) of Section 10241, the balloon disclosure required~~
19 ~~for that loan by Fannie Mae or Freddie Mac, or an alternative~~
20 ~~disclosure determined by the commissioner to satisfy the~~
21 ~~requirements of the Truth in Lending Act.~~

22 ~~Prior to becoming obligated on the loan the borrower shall~~
23 ~~acknowledge, in writing, receipt of the “good faith estimate” and~~
24 ~~all applicable disclosures required by the Truth in Lending Act.~~
25 ~~The real estate broker shall retain on file for a period of three years~~
26 ~~a true and correct copy of the signed acknowledgment and a true~~
27 ~~and correct copy of the “good faith estimate” and all applicable~~
28 ~~disclosures required by the Truth in Lending Act as acknowledged~~
29 ~~by the borrower.~~

30 (d) ~~A real estate broker may give a borrower the option to~~
31 ~~receive a copy of the statement required by this section in electronic~~
32 ~~format, paper format, or both. For purposes of this subdivision,~~
33 ~~“electronic format” means a format in which the information is~~
34 ~~held in a record created, generated, sent, communicated, received,~~
35 ~~or stored by electronic means. The electronic format shall be a~~
36 ~~format that does not jeopardize or compromise the security or~~
37 ~~integrity of the original record or of any proprietary software in~~
38 ~~which it is maintained.~~

39 SEC. 2 ~~Section 1922 is added to the Civil Code, to read:~~

1 ~~1922. A lender, as defined in paragraph (2) of subdivision (a)~~
2 ~~of Section 1921, that negotiates or services a loan for a borrower~~
3 ~~secured directly or collaterally by a lien on real property may give~~
4 ~~the borrower the option to receive a copy of the disclosures required~~
5 ~~by the Real Estate Settlement Procedures Act of 1974 and the~~
6 ~~Truth in Lending Act in electronic format, paper format, or both.~~
7 ~~For purposes of this section, “electronic format” means a format~~
8 ~~in which the information is held in a record created, generated,~~
9 ~~sent, communicated, received, or stored by electronic means. The~~
10 ~~electronic format shall be a format that does not jeopardize or~~
11 ~~compromise the security or integrity of the original record or of~~
12 ~~any proprietary software in which it is maintained.~~